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ATTORNEYS FOR RESPONDENT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

D&A AUTOMOTIVE , O.C. GENUINE  
SCOOTERS OF SANTA ANA,

Protestant,

v.

GENUINE SCOOTERS,

Respondent.

**Protest No: PR-2355-12**

**REPLY TO PROTESTANT'S  
RESPONSE TO MOTION TO  
DISMISS**

In the Matter of the Protest of:

D&A AUTOMOTIVE , O.C. GENUINE  
SCOOTERS TUSTIN,

Protestant,

v.

GENUINE SCOOTERS,

Respondent.

**Protest No: PR-2356-12**

1 Respondent, Genuine Scooters, LLC. ("Genuine" or Respondent"), submits the following  
2 Reply to Protestant's Response to Motion to Dismiss Protest in the above captioned matter, and  
3 respectfully moves for an order dismissing the Protests initiating this proceeding.

4 Protestant's assertion that it "has been active at all stages of this matter," is simply not true.  
5 The Board's records unequivocally reflect that Protestant has been dilatory in filing required  
6 documents, it has refused to participate in discovery, it has failed to participate in telephonic  
7 hearings, it has refused to attend the Mandatory Settlement Conference ("MSC"), despite repeated  
8 promises to counsel and Board staff to do so, and it has refused to retain counsel despite its stated  
9 intention that it would do so. These facts speak for themselves and provide overwhelming and  
10 compelling evidence for why these Protests should be dismissed.

11 These Protests were filed on or about December 14, 2012. It is now June 17, 2013, and this  
12 matter is no closer to resolution than the day it was filed. Mr. Tuchman's refusal to pursue these  
13 Protests continues to result in undue prejudice to Respondent. Protestant's repeated delay tactics  
14 include: 1.) Purported computer and email problems; 2.) Purported health issues that had never  
15 previously been suggested might preclude Protestant's participation in the MSC; 3.) Failing to  
16 appear for scheduled hearings; 4.) A litany of false statements to the Board, the majority *ex parte*,  
17 concerning communications with Board staff and the Law Offices of Michael J. Flanagan  
18 ("LOMJF").

19 Mr. Tuchman is unabashedly abusing the statutory scheme set in place to efficiently and  
20 quickly resolve disputes between new motor vehicle franchisees and franchisors. Mr. Tuchman is  
21 using these proceedings to effectively hold Respondent hostage for as long as possible and denying  
22 the Board the opportunity to decide this matter on the merits. Mr. Tuchman has demonstrated that  
23 he has no intention of proceeding to a hearing to attempt to demonstrate good cause exists to  
24 prevent the establishment of an additional Genuine dealer. His refusal to engage in discovery is  
25 clear evidence of this.

26 It is time to put an end to this nonsense and the needless waste of both the Board's and  
27 Respondent's time and resources. Mr. Tuchman has demonstrated that he is either unwilling or  
28 incapable of pursuing these Protests, and is also unwilling to retain competent counsel in the

1 alternative. He has further demonstrated his belief that the Board's orders are to be disregarded as  
2 inapplicable to him as a *pro per*. Finally, Mr. Tuchman has demonstrated that his representations to  
3 the Board and counsel cannot be relied upon.

4 Mr. Tuchman's meritless claim of conflict should be ignored. The Board is not the  
5 appropriate forum to raise this issue. Even if it were, Protestant only raised this issue after learning  
6 of Respondent's stated intention to move to dismiss. Moreover, Mr. Tuchman's allegations that  
7 LOMJF has made any misrepresentation to this Board or provided altered or misleading documents  
8 is false. While this issue has nothing to do with the pending Motion to Dismiss, it bears mentioning  
9 that the credibility and reputation of this office has been well established during the more than 30  
10 years that Mr. Flanagan has practiced before it. The suggestion that this office would commit a  
11 clear ethics violation to secure Mr. Tuchman as a client is absurd.

12 In addition, as mentioned in the Motion to Dismiss, the fact the Respondent *was* and is an  
13 *existing* LOMJF client is plainly set forth on our firm web site. It must be presumed that Mr.  
14 Tuchman was aware of this fact when he contacted our office in June of 2012. This would also  
15 explain why he chose to not identify which franchisor he was having issues with, as is reflected in  
16 the .1 of an hour billing entry submitted as an attachment to the motion.

17 Regardless of whether Protestant agrees, the dismissal of its Protests would be a blessing to  
18 it. The dismissal of these Protests will in essence save Mr. Tuchman from himself due to the  
19 demonstrable fact that Mr. Tuchman's conduct is certain to result in additional motions for  
20 sanctions should these proceedings be permitted to continue.

## 21 22 CONCLUSION

23 For these reasons, these Protests should be dismissed due to Protestant's repeated failure to  
24 pursue this matter. The Board's important public policy role in regard to the public welfare cannot  
25 be effectuated while these Protests continue to languish. If the Board does not grant Respondent's  
26 Motion to Dismiss, it is only a matter of time before Respondent is forced to file yet another Motion  
27 to Dismiss in response to Protestant's dilatory conduct that is all but certain to continue.

28 In addition, Respondent reiterates its request for an opportunity to submit documentation

1   evidencing costs and expenses, should the Board determine that an award of sanctions is appropriate  
2   under these circumstances.

3  
4  
5   Dated: June 17, 2013

LAW OFFICES OF  
MICHAEL J. FLANAGAN

7  
8   By   
9                   GAVIN M. HUGHES

**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

I, Valerie A. Coffey, declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California, 95825.

I declare that on June 17, 2013, I caused to be served a true and complete copy of:

***REPLY TO RESPONSE TO MOTION TO DISMISS***

***D&A Automotive, O.C. Genuine Scooters of Santa Ana***

***V***

***Genuine Scooters***

***Protest No. PR-2355-12***

***Consolidated***

By Electronic Mail:

*Also First Class Mail  
And Facsimile*

Terry Tuchman  
230 E Dyer Road E  
Santa Ana, CA 92707  
Fax 714.832.5265

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 June, 2013, Sacramento, California.

  
Valerie A. Coffey